

SEMINOLE COUNTY GOVERNMENT AGENDA MEMORANDUM

SUBJECT: Authorize Release of the Private Road Maintenance Agreement and Letter of Credit for Heatherwood Subdivision

DEPARTMENT: Planning and Development **DIVISION:** Development Review

AUTHORIZED BY: Dori DeBord

CONTACT: Lee Shaffer

EXT: 7346

MOTION/RECOMMENDATION:

Authorize the release of the Heatherwood Subdivision Private Road Maintenance Agreement and Letter of Credit #F848239 in the amount of \$151,327.00 for the Heatherwood Subdivision road improvements.

District 5 Brenda Carey

Lee Shaffer

BACKGROUND:

Section 35.44 (e) of the Seminole County Land Development Code, concerning Additional Required Legal Submittals, required the Heatherwood Subdivision project to have a Private Road Maintenance Agreement and Letter of Credit, specifically, Maintenance Agreement and Letter of Credit #F848239 for \$151,327.00 (SunTrust Bank), to insure against any significant degradation in operating conditions resulting from any defective work covered by this agreement. Staff conducted a two year maintenance inspection for this project located at Myrtle Avenue and Nolan Road and determined the improvements to be satisfactory.

STAFF RECOMMENDATION:

Staff recommends that the Board authorize the release of the Heatherwood Subdivision Maintenance Agreement and Letter of Credit #F848239 in the amount of \$151,327.00 for the Heatherwood Subdivision road improvements.

ATTACHMENTS:

1. Private Road Maintenance Agreement
2. Standby Letter of Credit
3. HOA Notification Response

Additionally Reviewed By:

☒ County Attorney Review (Kathleen Furey-Tran)

SUBDIVISION AND SITE PLAN

PRIVATE ROAD MAINTENANCE AGREEMENT
(For use with Letter of Credit)

THIS AGREEMENT is made and entered into this 5th day of April, 2006, between M/I Homes of Orlando, LLC, hereinafter referred to as "PRINCIPAL" and the Heatherwood@Lake Jesup Homeowner's Association of Heatherwood subdivision (hereinafter referred to as the "BENEFICIARY") or, if none, SEMINOLE COUNTY, a political subdivision of the State of Florida (hereinafter referred to as the "HOLDER"), on behalf of all purchasers of lots within Heatherwood subdivision.

W I T N E S S E T H:

WHEREAS, PRINCIPAL has constructed certain road improvements, including streets, curbs, storm drains and other appurtenances in that certain subdivision described as Heatherwood, a Plat of which is recorded in Plat Book Pages , Public Records of Seminole County, Florida; and

WHEREAS, the aforesaid road improvements were made pursuant to certain plans and specifications dated March 22, 2005, (as subsequently revised or amended) and filed with the BENEFICIARY or the HOLDER, as the case may be; and

WHEREAS, PRINCIPAL is obligated to protect the BENEFICIARY against any defects resulting from faulty materials or workmanship of said road improvements and to maintain said road improvements for a period of two (2) years from June 1, 2006; and

WHEREAS, to guarantee performance of said obligations by PRINCIPAL, PRINCIPAL has obtained and furnished to the BENEFICIARY or to the HOLDER on behalf of the owners of lots within the subdivision (hereinafter referred to as LOT OWNERS) a certain Irrevocable Letter of Credit No. FR48239 issued by Sun Trust Bank, in the sum of One Hundred Fifty One Thousand Three Hundred Twenty Seven DOLLARS (\$151,327.00).

NOW THEREFORE, the BENEFICIARY or the HOLDER on behalf of the LOT OWNERS, agrees to accept an Irrevocable Letter of Credit as security for the maintenance obligation of the PRINCIPAL.

PRINCIPAL, its heirs, executors, successors and assigns, jointly and severally agrees to be held and firmly bound to the BENEFICIARY or to the HOLDER on behalf of the LOT OWNERS in the sum of One Hundred Fifty One Thousand Three Hundred Twenty Seven DOLLARS (\$151,327.00) on the condition that, if PRINCIPAL shall promptly and faithfully protect the BENEFICIARY or LOT OWNERS against any defects resulting from faulty materials or workmanship of the aforesaid road improvements and maintain said road improvements for a period of two (2) years from June 1, 2006, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

The BENEFICIARY/HOLDER, or LOT OWNER shall notify the PRINCIPAL in writing of any defect for which the PRINCIPAL is responsible and shall specify in said notice a reasonable period of time within which PRINCIPAL shall have to correct said defect.

Should the PRINCIPAL fail or refuse to perform or correct said defects within the time specified, the BENEFICIARY/LOT OWNERS (which shall include, but not be limited to any individual lot owner in Heatherwood subdivision) shall be authorized, but shall not be obligated, to take over and perform, or cause to be performed, such work as shall be necessary to correct such defects, and shall be authorized to draw upon the Letter of Credit to pay the cost

thereof, including, but not limited to, engineering, legal and contingent costs. Further, the BENEFICIARY/LOT OWNERS (which shall include, but not be limited to any individual lot owner in Heatherwood subdivision), in view of the public interest, health, safety, welfare and other factors involved, and the consideration in approving and filing the said Plat shall have the right to resort to any and all legal remedies against the PRINCIPAL, both at law and in equity, including specifically, specific performance, to which the PRINCIPAL unconditionally agrees.

The PRINCIPAL further agrees that the BENEFICIARY/LOT OWNERS (which shall include, but not be limited to any individual lot owner in Heatherwood subdivision), at its option, shall have the right to correct said defects resulting from faulty materials or workmanship, or, pursuant to receipt of bids, cause to be corrected any defects or said defects in case the PRINCIPAL shall fail or refuse to do so, and, in the event the BENEFICIARY/LOT OWNERS should exercise and give effect to such right, the PRINCIPAL shall be obligated hereunder to reimburse the BENEFICIARY (which shall include, but not be limited to any individual lot owner in Heatherwood subdivision) the total cost thereof, including, but not limited to, engineering, legal and contingent costs, together with any damages, either direct or consequent, which may be sustained on account of the failure of the PRINCIPAL to correct said defects.

[This Agreement and all rights hereunder may be assigned by the HOLDER to the Homeowner's Association of Heatherwood @ Lake Jessup subdivision or to the individual lot owners of Heatherwood subdivision as the case may be.]

IN WITNESS WHEREOF, the parties to this Agreement have caused their names to be affixed hereto by the proper officers thereof.

BENEFICIARY:

ATTEST/WITNESSES:

Heatherwood @ Lake Jessup
Homeowners Association, INC.

[Signature]
[Signature]

By: SHWA, Vice President
Date: 4-5-06

PRINCIPAL:

Signed, sealed and delivered
in the presence of:

M/E HINES OF ORLANDO, LLC

[Signature]
[Signature]

By: SHWA, President of Land
Operations - Central
FLORIDA AREA
Date: 4-5-06

HOLDER:

DEPARTMENT OF PUBLIC WORKS
ROADS DIVISION
SEMINOLE COUNTY, FLORIDA

Owen D. Reagan

Owen Reagan, Acting Manager

Date: 10/10/06

Within authority delegated by the
County Manager pursuant to Resolution
No. 97-R-66 adopted March 11, 1997
and further delegated by Memorandum
dated March 27, 1997, Re: Streamlining
of Development-Related Agenda Items
and approved on April 2, 1997.

STATE OF

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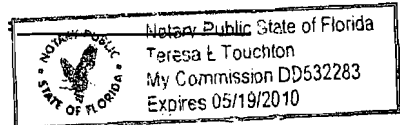
COUNTY OF

) ss
)

The foregoing instrument was acknowledged before me this 10 day of
October, 192006, by Owen Reagan, who is personally known to me
or who has produced _____ as identification.

Teresa L. Touchton
Print Name Teresa L. Touchton
Notary Public in and for the County
and State Aforementioned

My commission expires





LETTER OF CREDIT NUMBER FB48239

ISSUANCE DATE: APRIL 05, 2006

APPLICANT:

M/I HOMES OF ORLANDO, INC.
3 EASTON OVAL, SUITE 300
COLUMBUS, OHIO 43219

BENEFICIARY:

HEATHERWOOD AT LAKE JESSUP
HOMEOWNERS ASSOCIATION
237 S. WESTMONTE DR., SUITE 111
ALTAMONTE SPRINGS, FL 32714

FOR USD 151,327.00

(ONE HUNDRED FIFTY ONE THOUSAND THREE HUNDRED TWENTY SEVEN 00/100
U.S. DOLLARS)

DATE OF EXPIRATION: JUNE 01, 2008

PLACE OF EXPIRATION: AT OUR COUNTERS

WE HEREBY ESTABLISH OUR IRREVOCABLE LETTER OF CREDIT NO. FB48239
IN YOUR FAVOR FOR ACCOUNT OF THE ABOVE-REFERENCED APPLICANT
AVAILABLE BY YOUR DRAFTS DRAWN ON US PAYABLE AT SIGHT FOR ANY SUM
OF MONEY NOT TO EXCEED A TOTAL OF THE AMOUNT REFERENCED ABOVE
WHEN ACCOMPANIED BY THIS LETTER OF CREDIT AND THE FOLLOWING
DOCUMENT:

BENEFICIARY'S DATED CERTIFICATE PURPORTEDLY SIGNED
BY ONE OF ITS OFFICIALS STATING:

"A SIGNED STATEMENT OF THE HEATHERWOOD AT LAKE JESSUP
HOMEOWNERS ASSOCIATION THAT THE PRIVATE ROAD
MAINTENANCE AGREEMENT DATED JUNE 1, 2006, BETWEEN M/I
HOMES OF ORLANDO, LLC AND THE HEATHERWOOD AT LAKE
JESSUP HOMEOWNERS ASSOCIATION IS IN DEFAULT."

THIS LETTER OF CREDIT SHALL AUTOMATICALLY RENEW ITSELF FOR
SUCCESSIVE ONE YEAR PERIODS UNLESS THE BANK SHALL GIVE NOTICE TO
YOU NO LATER THAN FORTY-FIVE (45) DAYS PRECEDING AN EXPIRATION

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LETTER OF CREDIT NUMBER FB48239

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DATE THAT IT CHOOSES NOT TO RENEW THE LETTER OF CREDIT. IN WHICH CASE, THE HEATHERWOOD AT LAKE JESSUP HOMEOWNERS ASSOCIATION SHALL BE ENTITLED TO DEMAND AND RECEIVE THE OUTSTANDING AMOUNT OF MONEY REPRESENTED BY THIS LETTER OF CREDIT. IN THE EVENT A DRAW BASED ON EXPIRATION OF THIS LETTER OF CREDIT THE PROCEEDS SHALL BE HELD BY THE HEATHERWOOD AT LAKE JESSUP HOMEOWNERS ASSOCIATION AS A CASH BOND TO SECURE CONTINUED ADHERENCE TO THE TERMS OF THE PRIVATE ROAD MAINTENANCE AGREEMENT WITH M/I HOMES OF ORLANDO, LLC.

UPON TENDER OF PAYMENT, YOU WILL RELEASE TO THE BANK THE ORIGINAL IRREVOCABLE LETTER OF CREDIT MARKED "CANCELLED." IN ANY EVENT, UPON EXPIRATION OF THE PRIVATE ROAD MAINTENANCE AGREEMENT DATED JUNE 1, 2006, AND THE COMPLETION OF M/I HOMES OF ORLANDO, LLC OBLIGATIONS THEREUNDER, YOU WILL RETURN THE ORIGINAL LETTER OF CREDIT TO THIS BANK MARKED "CANCELLED."

IF THE HEATHERWOOD AT LAKE JESSUP HOMEOWNERS ASSOCIATION INITIATES SUIT UNDER THIS LETTER OF CREDIT, THE BANK HEREBY AGREES TO BE RESPONSIBLE FOR THE HEATHERWOOD AT LAKE JESSUP HOMEOWNERS ASSOCIATIONS COURT COSTS AND REASONABLE ATTORNEYS' FEES, BUT THE BANK SHALL NOT BE RESPONSIBLE FOR ANY ATTORNEYS' FEES IN EXCESS OF FIFTEEN PERCENT (15%) OF THE AGGREGATE AMOUNT OF THIS LETTER OF CREDIT.

THIS LETTER OF CREDIT SETS FORTH IN FULL THE TERMS OF OUR UNDERTAKING AND SUCH UNDERTAKING SHALL NOT, IN ANY WAY, BE AMENDED BY REFERENCE HEREIN TO ANY AGREEMENT, AND ANY SUCH REFERENCE SHALL NOT BE DEEMED TO INCORPORATE HEREIN BY REFERENCE ANY DOCUMENT OR AGREEMENT OTHER THAN THE PRIVATE ROAD MAINTENANCE AGREEMENT DATED JUNE 1, 2006, AND REFERENCED HEREIN.

THIS LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (1993 REVISION), INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION 500.

WE HEREBY AGREE WITH YOU THAT ALL DRAFTS DRAWN IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE DULY HONORED UPON PRESENTATION AND DELIVERY OF THE DOCUMENTS SPECIFIED ABOVE TO THE BELOW ADDRESS ON OR BEFORE JUNE 01, 2008 OR ANY AUTOMATICALLY EXTENDED DATE.

ALL DOCUMENTS ARE TO BE REMITTED TO:
SUNTRUST BANK, INTERNATIONAL DIVISION
ATTN: LETTER OF CREDIT DEPARTMENT

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SUNTRUST

LETTER OF CREDIT NUMBER F84S239

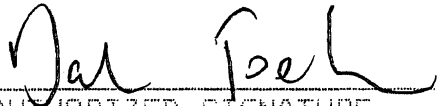
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25 PARK PLACE, 16TH FLOOR, MC 3706
ATLANTA, GEORGIA 30303

PLEASE DIRECT ALL INQUIRIES TO:
PHONE: 800-951-7847 OPTION 3.

SINCERELY,

SUNTRUST BANK

A handwritten signature in dark ink, appearing to read "Dale Toothill", is written over a horizontal line.

AUTHORIZED SIGNATURE

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Dale Toothill
Assistant Vice President

Heatherwood at Lake Jessup Homeowners Association, Inc.

5401 S. Kirkman Road, Suite 450

Orlando, FL 32819

March 3, 2009

Mr. Justin Campbell,
Land Development Manager
M/I Homes of Orlando, LLC
Lake Mary, Florida

Subject: Heatherwood at Lake Jessup
Engineering report

Dear Mr. Campbell,

This letter is to serve as confirmation that all the items noted on the engineering report, done by Windermere Properties and Engineering Services, Inc. and brought up during the turnover meeting, have been addressed. All obligations, related to the engineering report, have been met, and the owners are now in full-control of the HOA and its related matters.

Thank you for your help, and feel free to contact me if you have any questions or need any additional information.

On behalf of the board of directors,

A handwritten signature in black ink that reads "Frank Constable". The signature is stylized with a large, looping "F" and "C".

Frank Constable
President, Heatherwood at Lk Jessup HOA, Inc.